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ABSTRACT

This digest summarizes the reauthorized Individuals with Disabilities Education Act Amendments of 1997 (IDEA 97) with emphasis on changes in the new law. First, it highlights principal changes in the law. These changes include participation of children and youth with disabilities in state and districtwide assessment programs; the way in which evaluations are conducted; parent participation in eligibility and placement decisions; development and review of the Individualized Education Program (IEP) to emphasize inclusion of children with disabilities in general education classrooms; the addition of transition planning; voluntary mediation as a means of resolving parent-school controversies; and discipline of children with disabilities. This review discusses each of these issues, then presents a side-by-side analysis of how the IDEA has been changed to address each issue. Also included are a summary of effective dates for implementation of the major IDEA provisions and an index. (DB)

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NEWS DIGEST

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The IDEA Amendments of 1997

After two years of analysis, hearings, discussions, and other legislative activities, both the Senate and the House of Representatives have passed legislation that reauthorizes and amends the Individuals with Disabilities Education Act (IDEA). President Clinton signed the bill into law on June 4, 1997. The reauthorized legislation is called the "Individuals with Disabilities Education Act Amendments of 1997," and is Public Law 105-17.

This *News Digest* provides readers with an overview of the major changes to the IDEA, as well as a detailed, point-by-point look at the law, including verbatim language of portions of the law itself. Information is presented in a side-by-side analysis, with portions of the "old" IDEA's requirements presented on the left side of the page, and the "new" IDEA's requirements (and specific language) presented on the right. This presentation will allow readers to readily see some of the principle areas where the IDEA has changed and where it has remained essentially the same.

This document is intended for individuals who are already familiar with the previous IDEA and who want to know the specifics of IDEA 97. This includes state and local education agency personnel such as administrators and special education directors; Parent Training and Information (PTI) center staff and advocates; school personnel such as principals, special educators, and general educators; and other people who have a base of knowledge about this important legislation.

An Overview of the Changes

The Individuals with Disabilities Education Act Amendments of 1997 bring many changes to the law that was initially passed in 1975 as P.L. 94-142. That law, known as the Education for All Handicapped Children Act, or the EHA, has guaranteed since 1975 that eligible children and youth with disabilities

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would have available to them a free appropriate public education (FAPE) designed to meet their unique educational needs. P.L. 94-142 has been amended many times since its original enactment, each time after lengthy debate and consideration. This latest reauthorization includes many modifications to the law. Some of these changes are significant, while others subtly fine tune the processes already laid out for schools and parents to follow in planning and providing special education and related services to children and youth with disabilities.

What are some of the most significant changes to the IDEA? Basically, the changes fall into several areas that are critically important to the special education process. These include:

- ★ participation of children and youth with disabilities in State and districtwide assessment (testing) programs;
- ★ the way in which evaluations are conducted;
- ★ parent participation in eligibility and placement decisions;
- ★ development and review of the Individualized Education Program (IEP), including increased emphasis upon participation of children and youth with disabilities in the general education classroom and in the general curriculum, with appropriate aids and services;
- ★ the addition of transition planning;
- ★ voluntary mediation as a means of resolving parent-school controversies; and
- ★ discipline of children with disabilities.

This overview looks at each of these issues briefly, then refers the reader to the side-by-side analysis of how the IDEA has been changed to address each issue.

Including Children and Youth with Disabilities in Assessments

Whether or not students with disabilities should take part in assessments (testing) conducted across their State or district has been an area of controversy over the years. If these students are included, what type of modifications and accommodations, if any, should be made to ensure that their disabilities do not get in the way of their demonstrating what they know or can do?

IDEA 97 explicitly requires States to include children with disabilities, with accommodations when necessary, in State and districtwide assessment programs. For children who cannot participate in regular assessments, States must develop alternative assessments by 2000.

To read the verbatim language of the new IDEA regarding these requirements, see page 15.

Evaluating Children

The IDEA 97 amends the way in which children with disabilities are: (a) evaluated initially to determine whether or not they have a disability, and (b) reevaluated every three years to determine whether or not they continue to have a disability. This section highlights some of the changes made to both the initial evaluation process and the reevaluation process.

Initial evaluations. As previously required by law, before a school may provide special education and related services to a child for the first time, a full and individual initial evaluation of the child must be conducted. Also as before, parents must give their informed consent to this initial evaluation. The initial evaluation is conducted to determine:

- ☆ whether a child is a "child with a disability," as defined by IDEA 97 in Section 602(3); and
- ☆ the educational needs of the child.

The process by which schools answer these questions has changed under IDEA 97. The school begins, if appropriate, by reviewing existing evaluation data on the child, including evaluations and information provided by the parents, current classroom-based assessments and observations, and observations of teachers and related services providers. The group of individuals involved in this review is the IEP Team and other qualified professionals, as appropriate. On the basis of that review, and input from the parents, the team identifies what additional data, if any, are needed to determine:

- ☆ whether the child has a particular category of disability [as described in Section 602(3)];
- ☆ the present levels of educational performance and the educational needs of the child;

Changes Not Covered in This Document

Space does not permit us to cover all the changes that reauthorization has brought to the IDEA. We have selected for discussion those modifications and new requirements that most directly affect how services are provided at the local level—for instance, IEP changes, behavioral issues and discipline—and those changes that, although made Statewide, affect families and the professionals who work with them—such as mediation and assessment of children with disabilities.

Not discussed are changes to the law that are highly administrative in nature, such as state funding formulas, the state-local funding split, and school-based improvement plans. Plans are to make discussion of these changes available separately.

- whether the child needs special education and related services;
- whether any additions or modifications to the special education and related services are needed to enable the child to meet measurable annual IEP goals and participate, as appropriate, in the general curriculum.

This latter aspect—identifying the additions or modifications the student needs to the special education and related services—may appear to apply exclusively to reevaluation of a student, as opposed to an initial evaluation. However, even as part of an initial evaluation, it will be important for the team to contemplate what additions or modifications the student will need to his or her special education and related services and look at the existing evaluation data to determine if, indeed, the team can identify this information.

If the team identifies additional data that are needed, the local educational agency (LEA) must then administer such tests and other evaluation materials as may be needed to produce the data identified by the team.

Generally, IDEA 97 maintains previous requirements with respect to the use of appropriate, sound, and nondiscriminatory evaluation practices (e.g., not using any single procedure as the sole criterion for determining whether a child has a disability or for determining the appropriate educational program for the child; using technically sound instruments; providing and administering tests and other evaluation materials in the child's native language or other mode of communication, unless it is clearly not feasible to do so). IDEA 97 adds the specific requirement that the local educational agency must use a variety of assessment tools and strategies to gather relevant functional and developmental information about the child that will help determine not only whether the child is "a child with a disability" as defined in Section 602(3) of the law, *but also that directly assist persons in determining the educational needs of the child*. This includes gathering information related to enabling the child to be involved in and progress in the general curriculum (or, for preschool children, to participate in appropriate activities).

Thus, under IDEA 97, the major changes to the initial evaluation process, generally, are:

- The team needs to look at existing evaluation information and use it, if appropriate.
- Parents are entitled to provide input about their child during the evaluation.
- The initial evaluation needs to yield data that can be used to determine the student's eligibility for special education and related services *AND* to inform decision making with respect to what would be an appropriate education for that child.

The use of existing evaluation data is expected to prevent unnecessary assessment of students and reduce the cost of evaluations.

Following the initial evaluation of the child, the determination of whether the child is a "child with a disability," as defined within IDEA, must be made by a team of qualified professionals and the child's parents. (Parental involvement in the eligibility decision is a new requirement in IDEA and is discussed on pages 4 and 5.) A copy of the evaluation report and the documentation of determination of eligibility must be given to the parents.

The team of qualified professionals and the parent making the eligibility determination must take into consideration another new provision of the law—the "Special Rule for Eligibility Determination." This provision states that, in making an eligibility determination, "a child shall not be determined to be a child with a disability if the determinant factor for such determination is lack of instruction in reading or math or limited English proficiency" [Section 614(b)(5)].

When the proposed IDEA 97 was sent to Congress, it was accompanied by the *Report [to accompany S. 717]*—S. 717 was the bill number given to the proposed legislation. This report explained the intent behind proposed changes. With respect to the law's "Special Rule for Eligibility Determination," the report states:

> The committee intends that professionals, who are involved in the evaluation of a child, give serious consideration at the conclusion of the

Getting a Copy of IDEA 97

There are several places from which you can obtain a copy of IDEA 97. The quickest of these are Internet sites that have posted the law in its entirety. If you have access to the Internet, try:

http://www.ed.gov/offices/OSERS/IDEA Office of Special Education and Rehabilitative Services (OSERS), at the Department of Education; choose "The Law"

For a nominal fee, you can also obtain a copy of the new law by contacting: Superintendent of Documents, Attention: New Orders, P.O. Box 371954, Pittsburgh, PA 15250-7954. Charge orders may be telephoned to the Government Printing Office at (202) 512-1800. Ask for a copy of Public Law 105-17, the Individuals with Disabilities Education Act Amendments of 1997.

evaluation process to other factors that might be affecting a child's performance. There are substantial numbers of children who are likely to be identified as disabled because they have not received proper academic support. Such a child often is identified as learning disabled, because the child has not been taught, in an appropriate or effective manner for the child, the core skill of reading. Other cases might include children who have limited English proficiency... The committee believes that this provision will lead to fewer children being improperly included in special education programs where their actual difficulties stem from another cause and that this will lead schools to focus greater attention on these subjects in the early grades. (Committee on Labor and Human Resources, 1997, p. 19)

Reevaluations. Under the previous law, each student receiving special education and related services was reevaluated every three years in all areas related to his or her disability. The purposes of this reevaluation were to determine if the child continued to be a "child with a disability" (as defined within IDEA) and what his or her present levels of educational performance and educational needs were.

Under IDEA 97, an LEA must ensure that a reevaluation of each child with a disability is conducted if "conditions warrant a reevaluation or if the child's parent or teacher requests a reevaluation, but at least once every 3 years" [Section 614(a)(2)(A)]. The new law, however, has streamlined the reevaluation process. Many of the aspects described above under initial evaluation apply as well to reevaluation. Now, at least every three years, the IEP Team and other qualified professionals, as appropriate, must review existing evaluation data on the child and, based upon that review and upon input from the parents, must identify what additional information (if any) is needed to determine:

- ☆ if the child continues to have a particular category of disability (as described within IDEA) and continues to need special education and related services;
- ☆ what the child's present levels of performance and educational needs are;
- ☆ whether any additions or modifications to the special education and related services are needed to enable the child to meet the goals set out in the IEP and to participate, as appropriate, in the general curriculum.

As members of the IEP Team, parents participate in this review of existing data.

If IEP Team members (and other qualified professionals, as appropriate) feel that they do not have enough information to answer the above questions, then the LEA must administer such tests and other evaluation procedures as may be needed to produce the information identified by the team. Parents must give informed consent before their child may be reevaluated. The need for informed parental consent for reevaluation is new to the law; previously such consent was only needed for initial evaluations. If parents fail to respond to the LEA's request for consent to reevaluate the child, the LEA may proceed without it, if the LEA can demonstrate that it took reasonable measures to obtain the consent and the parents failed to respond.

"Under the new legislation, parents are specifically included as members of the group making the eligibility decision... Parent participation in placement decisions is similarly required."

On the other hand, upon examining the existing evaluation data, the IEP Team and other qualified professionals (as appropriate) may determine that sufficient data are available to determine whether the child continues to be a "child with a disability." In this case, the LEA is not required to conduct additional assessment of the child (unless requested to by the child's parents, as noted below). Parents must be notified of that determination and the reasons for it, as well as their right to request that their child be assessed to determine whether the child continues to be a "child with a disability," as defined within IDEA. If parents request such an assessment, the LEA must conduct it. As with initial evaluation, a copy of the evaluation report and the documentation of determination of eligibility must be given to the parent.

The *Report [to accompany S. 717]* provides an explanation regarding the changes IDEA 97 brings to the entire evaluation prrocess—both initial evaluation and reevaluation. These remarks are provided in the box on the next page. To read the precise language of IDEA 97 in regard to the initial evaluation and reevaluation of children, see pages 22-25 in this *News Digest.*

Parent Participation in Eligibility and Placement Decisions

Under the old IDEA, parent participation was not required for making decisions regarding a student's eligibility for special education and related services. As

was mentioned above, under the new legislation parents are specifically included as members of the group making the eligibility decision. (See page 17 for the precise language of the law.)

Parent participation in placement decisions is similarly required. Under the old legislation, parent involvement in deciding the placement of their child was not required. The new IDEA makes clear that parents are to be included in the group that makes the decision with respect to the child's educational placement. (See page 21 for the exact language used in the new IDEA.)

The Report [to Accompany S. 717]— on the Evaluation Process under IDEA 97

"One of the most significant changes in the bill relates to how the evaluation process should be viewed. For example, over the years, the required 3-year reevaluation has become a highly paperwork-intensive process, driven as much by concern for compliance with the letter of the law, as by the need for additional evaluation information about a child. The committee believes that a child should not be subjected to unnecessary tests and assessments if the child's disability has not changed over the three-year time period, and the LEA should not be saddled with associated expenses unnecessarily. If there is no need to collect additional information about a child's continuing eligibility for special education, any necessary evaluation activities should focus on collecting information about how to teach and assist the child in the way he or she is most capable of learning."

(Committee on Labor and Human Resources, 1997, p. 19)

Individualised Education Program Requirements

Each student's Individualized Education Program, or IEP, is a vital document, for it spells out the special education and related services that he or she will receive. The IEP is developed by a team that includes both parents and school professionals and, when appropriate, the student. The new IDEA maintains the IEP as a document of central importance and, in the hope of improving compliance, moves all provisions related to the IEP to one place in the law—Section 614(d). (Under the prior law, IEP provisions were found in several different places.)

At the same time, several key changes have been made to what information the IEP must contain and the way in which the IEP is developed. These changes are to take effect on July 1, 1998. [The exception is provisions related to children with disabilities who have been convicted as adults and incarcerated in adult prisons. These provisions (see page 17) take effect immediately.]

The information the IEP must include. The IEP retains many familiar components from previous legislation, such as statements regarding the student's present levels of educational performance, annual goals, special education and related services to be provided, projected dates for the beginning and end of services, and transition services for youth. However, some modifications have been made to these familiar components to place more emphasis within the law upon involving students with disabilities in the general curriculum and in the general education classroom, with supplementary aids and services as appropriate.

For example, "present levels of educational performance" must now include a statement of how the child's disability affects his or her involvement and progress in the general curriculum. Similarly, the IEP must contain a statement of special education and related services, as well as the supplementary aids and services, that the child or youth needs in order to:

> ...be involved and progress in the general curriculum...and to participate in extracurricular and other nonacademic activities; and...to be educated and participate with other children with disabilities and nondisabled children... [Section 614(d)(1)(A)(iii)]

With these new IEP requirements, there is a clear intent to strengthen the connection between special education and the general education curriculum. As the Committee on Labor and Human Resources' (1997) ***Report [to accompany S. 717]*** states:

> The new emphasis on participation in the general education curriculum...is intended to produce attention to the accommodations and adjustments necessary for disabled children to access the general education curriculum and the special services which may be necessary for appropriate participation in particular areas of the curriculum... (p. 20)

Along the same line is the requirement that the IEP include an explanation of the extent to which the student will ***not*** be participating with nondisabled children in the general education class and in extracurricular and non-academic activities. This explanation of the extent to which the child will be educated separately is a new component of the IEP, yet is clearly in keeping with the changes noted above.

Other aspects of the IEP are entirely new as well. For example, each student's IEP must now include a statement of how the administration of State or districtwide assessments will be modified for the student so that he or she can participate. If the IEP team determines that the student cannot participate in such assessments, then the IEP must include a statement of (a) why the assessment is not appropriate for the child, and (b) how the child will be assessed. These changes work in tandem with changes elsewhere in the IDEA requiring that students with disabilities be included in State and districtwide assessments of student achievement.

Other new IEP requirements are statements regarding: (a) informing the student about the transfer of rights, if any, as he or she approaches the age of majority; (b) how parents will be regularly informed of their child's progress toward meeting the annual goals in the IEP; (c) where services will be delivered to the student; and (d) transition service needs of the student beginning at age 14 (see column 3 for a more detailed discussion of this new requirement).

To read the precise language of IDEA 97 in regard to the contents of the IEP, see pages 18-19 in this *News Digest.*

Developing the IEP. The new IDEA maintains essentially the same process for developing the IEP—namely, the document is developed by a multidisciplinary team, including the parents. However, the new legislation increases the role of the general educator on the IEP team, to include, when appropriate, helping to determine positive behavioral interventions and appropriate supplementary aids and services for the student.

Also added to the IEP process are "special factors" that the IEP team must consider. These factors include:

- ☆ behavior strategies and supports, if the child's behavior impedes his or her learning or that of others;
- ☆ the child's language needs (as they relate to the IEP) if the child has limited English proficiency;
- ☆ providing for instruction in Braille and the use of Braille (unless not appropriate), if a child is blind or visually impaired; and
- ☆ the communication needs of the child, with a list of specific factors to be considered if a child is deaf or hard of hearing; and
- ☆ whether the child requires assistive devices and services.

To read the precise language of IDEA 97 in regard to IEP development, see pages 19-20.

Reviewing and revising the IEP. The language in the new IDEA emphasizes periodic review of the IEP (at least annually, as previously required) and revision as needed. A new, separate requirement exists: Schools must report to parents on the progress of their child with disabilities at least as frequently as progress of nondisabled children is reported, which seems likely to affect the revision process for IEPs. If it becomes evident that a child is not making "expected progress toward the annual goals and in the general curriculum," the IEP Team must meet and revise the IEP.

"The new legislation increases the role of the general educator on the IEP team, to include, when appropriate, helping to determine positive behavioral interventions and appropriate supplementary aids and services for the student."

IDEA 97 specifically lists a variety of other circumstances under which the IEP team would also need to review and revise the IEP, including the child's anticipated needs, the results of any reevaluation conducted, or information provided by the parents.

To read the precise language of IDEA 97 in regard to the reviewing and revising the IEP, see pages 20-21 in this *News Digest.*

Transition Services

The requirements for providing transition services for youth with disabilities have been modified in IDEA 97. While the definition of transition services remains the same, two notable changes have been made to IEP requirements:

- ☆ beginning when a student is 14, and annually thereafter, the student's IEP must contain a statement of his or her transition service needs under the various components of that IEP that focus upon the student's courses of study (e.g., vocational education or advanced placement); and
- ☆ beginning at least one year before the student reaches the age of majority under State law, the IEP must contain a statement that the student has been informed of the rights under the law that will transfer to him or her upon reaching the age of majority.

The new law maintains 16 as the age when students' IEPs must contain statements of needed transition services. These two requirements—one for students aged 14 and older and one for students aged 16 and older— seem confusingly similar. However, the purpose of including certain statements for students beginning at age

14, according to the Committee on Labor and Human Resources' (1997) *Report [to accompany S. 717]*, "is to focus attention on how the child's educational program can be planned... [and] the provision is designed to augment, and not replace, the separate transition services requirement, under which children with disabilities [who are 16 or older] receive transition services..." (p. 22).

To read the precise language of IDEA 97 in regard to the transition services, see page 19.

Mediation

IDEA 97 establishes mediation as a primary process to be used in resolving conflicts between schools and the parents of a child with a disability. While prior legislation permitted mediation, the new legislation explicitly outlines States' obligations for creating a mediation system in which parents and schools may voluntarily participate. Among a State's obligations are:

- ensuring that the mediation process is voluntary on the part of the parties, is not used to deny a parent's right to due process, and is conducted by a qualified and impartial mediator trained in effective mediation techniques;
- maintaining a list of qualified mediators; and
- bearing the cost of the mediation process.

Some parents may choose not to use mediation, and States may establish procedures requiring parents to meet with a impartial party who would explain the benefits of mediation and encourage them to make use of the process.

The verbatim language of the new IDEA regarding mediation can be found on pages 26-27 in this *News Digest*.

"IDEA 97 establishes mediation as a primary process to be used in resolving conflicts between schools and the parents of a child with a disability."

Discipline of Children with Disabilities

Some of the most sweeping—and complicated— changes in the new IDEA are in the area of disciplining children with disabilities. To assist schools in understanding and complying with these new requirements, the Office of Special Education Programs (OSEP), U.S. Department of Education, released an initial guidance on September 19, 1997. (You can obtain this guidance from NICHCY or on the Internet at: www.ed.gov/offices/OSERS/IDEA/memo.html) An essential means of developing an accurate understanding of IDEA 97's disciplinary requirements is to read the the law itself. As requested by OSEP, the discussion of discipline in this *News Digest* is kept to providing verbatim quotations from P.L. 105-17.

The requirements of law are found in Section 615(k), "Placement in Alternative Educational Setting." This section is divided into 10 subparagraphs (e.g., authority of school personnel, authority of hearing officer, determination of setting, manifestation determination review, and so on).

There is no substitute for reading exactly what the law says. If you are interested in or concerned about the disciplining of children with disabilities, we urge you to read Section 615(k) of IDEA 97 in its entirety. The complete, unabridged text of this section is presented in the side-by-side analysis, beginning on page 29.

The Next Steps

Laws passed by Congress provide a general framework of policy related to a particular issue. Once a law is passed, Congress delegates the task of developing regulations to guide the law's implementation to an administrative agency within the Executive Branch. These Federal regulations are published in the *Code of Federal Regulations (CFR)*. The CFR interprets and further explains the law.

Regulations exist for the old IDEA, in CFR Title 34 Parts 300 to 338. Proposed regulations for IDEA 97 were published in the *Federal Register* on October 22, 1997. A 90-day period of public comment followed the publication of these proposed regulations, where individuals and groups provided feedback and identified concerns regarding what was proposed. Comments are being reviewed and, if appropriate, revisions will be made, and then final regulations will be published.

Until final regulations are available, States are required to implement IDEA 97 with the guidance available from old regulations (where these remain in accordance with the IDEA 97 statute) and from the language of the new statute (where new regulations do not exist to reflect and interpret changes that have occurred). Plans are to have final regulations by the Spring of 1998.

References

Committee on Labor and Human Resources. (1997, May 9). *Report [to accompany S. 717]*. Washington, DC: Government Printing Office. [Available from Superintendent of Documents, Attention: New Orders, P.O. Box 371954, Pittsburgh, PA 15250-7954. Charge orders may be telephoned to the Government Printing Office at (202) 512-1800. The *Report* is also available on-line, under "The Law," at: www.ed.gov/offices/OSERS/IDEA.]

Effective Dates for IDEA 97

Although Congress passed the amendments to the IDEA, and President Clinton signed them into law, not all aspects of the new law became effective immediately. Here is a brief synopsis of effective dates for IDEA 97.

☆ Parts A & B took effect immediately upon the President's signature EXCEPT:

— Section 612(a)(4) and Section 614(d) [the IEP] take effect on July 1, 1998, except for Section 614(d)(6) [provisions for children with disabilities convicted as adults and incarcerated in adult prisons], which took effect immediately upon enactment.

— Section 612(a)(14) [Comprehensive System of Personnel Development] takes effect on July 1, 1998.

— Section 612(a)(16) [Performance Goals and Indicators] takes effect on July 1, 1998.

— Section 617 [Administration] took effect on October 1, 1997.

— Section 618 [Program Information/Data collection] takes effect on July 1, 1998.

— Section 611 & 619 take effect beginning with funds appropriated for FY 98.

☆ Part C [Infants and Toddlers with Disabilities Program], the current Part H (see below), takes effect July 1, 1998.

☆ Part D [State Improvement Grants and IDEA discretionary programs] took effect October 1, 1997, EXCEPT as listed below. Parts C, E, F, and G of the old law were repealed effective October 1, 1997. *Note:* The Act gives the Secretary the authority to use funds appropriated under the new Part D to make continuation awards for projects funded under Section 618 and Parts C through G of the IDEA as in effect on September 30, 1997.

— Section 661(g)(1) and (2) [Requirement for the Secretary to establish and use a standing panel and peer review panels for reviewing applications under Subpart 2 of Part D (IDEA discretionary programs)] took effect January 1, 1998.

☆ Part H [Infants and Toddlers with Disabilities Program] is repealed effective July 1, 1998. At that time, the Infants and Toddlers with Disabilities Program becomes Part C of the law.

☆ Part I (Family Support Program) is repealed as of October 1, 1998.

The IDEA's Framework

Old Law

Nine Parts: A—General provisions, definitions, and discretionary program administration; B—School age and preschool programs; C—Centers-based discretionary programs; D—Training; E—Research discretionary programs; F—Instructional media; G—Technology and media; H—Infants and toddlers program; and I—Family support.

New Law

Four Parts: A—General provisions and definitions; B—School age and preschool programs; C—Infant and toddler programs and D—Discretionary programs.

Part A: General Provisions Definitions & Other Issues

Old Law

★ *Serious emotional disturbance* was the designated disability category to be used for certain children with disabilities.

★ *Developmental delay* was an option that States could use to categorize children ages 3 through 5.

★ *Educational service agency* was not defined in the old law.

New Law

★ *Serious emotional disturbance* remains as a disability category, but the new law inserts that this disability will be "(hereinafter referred to as 'emotional disturbance')." [Section 602(3)(A)(i)]

★ *Developmental delay* may now be used, at the discretion of the State and the local educational agency, as a category for children with disabilities from ages 3 through 9.

"(B) CHILD AGED 3 THROUGH 9.—The term 'child with a disability' for a child aged 3 through 9 may, at the discretion of the State and the local educational agency, include a child—

"(i) experiencing developmental delays, as defined by the State and as measured by appropriate diagnostic instruments and procedures, in one or more of the following areas: physical development, cognitive development, communication development, social or emotional development, or adaptive development; and

"(ii) who, by reason thereof, needs special education and related services." [Section 602(3)(B)]

★ The new law defines *educational services agency* as a term that...

"(A) means a regional public multiservice agency— (i) authorized by State law to develop, manage, and provide services or programs to local educational agencies; and (ii) recognized as an administrative agency for purposes of the provision of special education and related services provided within public elementary and secondary schools of the State; and

"(B) includes any other public institution or agency having administrative control and direction over a public elementary or secondary school." [Section 602(4)]

Please Note!

Space limitations do not permit us to go over every change in the law. See the introduction and the box on page 2 for more details about what information is covered in this document and what's not.

Old IDEA	IDEA 97
★ Definition of *parents* in regulations	★ The term *parents* is now defined to include legal guardians and surrogate parents. [Section 602(19)]
★ ***Related services:*** Orientation and mobility services were not specifically mentioned in the old law but were covered under regulations.	★ *Related services:* Orientation and mobility services are now specifically mentioned in the list of related services. [Section 602(22)]
★ ***Supplemental aids and services*** were not defined in the statute or regulations.	★ The term ***supplementary aids and services*** is now defined as: "...aids, services, and other supports that are provided in regular education classes or other education-related settings to enable children with disabilities to be educated with nondisabled children to the maximum extent appropriate in accordance with section 612(a)(5)" [requirements concerning least restrictive environment]. [Section 602(29)]
★ *Transition services*	★ *Transition services:* "Related services" are now included in the definition of transition services. [Section 602(30)]
★ *Policy letters and regulations:* The old law extended the department-wide 30-day period of public comment to 90 days and established a baseline for regulatory implementation. Policy letters were considered to be interpretations of policy, but not legally binding.	★ *Policy letters and regulations:* The new law at Section 607 clarifies procedures regarding the U.S. Department of Education's use of policy letters and other correspondence. "(c) POLICY LETTERS AND STATEMENTS.—The Secretary may not, through policy letters or other statements, establish a rule that is required for compliance with, and eligibility under, this part without following the requirements of section 553 of title 5, United States Code. "(d) CORRESPONDENCE FROM DEPARTMENT OF EDUCATION DESCRIBING INTERPRETATIONS OF THIS PART.— "(1) IN GENERAL.—The Secretary shall, on a quarterly basis, publish in the Federal Register, and widely disseminate to interested entities through various additional forms of communication, a list of correspondence from the Department of Education received by individuals during the previous quarter that describes the interpretations of the Department of Education of this Act or the regulations implemented pursuant to this Act. "(2) ADDITIONAL INFORMATION.—For each item of correspondence published in a list under paragraph (1), the Secretary shall identify the topic addressed by the correspondence and shall include such other summary information as the Secretary determines to be appropriate. "(e) ISSUES OF NATIONAL SIGNIFICANCE.—If the Secretary receives a written request regarding a policy, question, or interpretation under part B of this Act, and determines that it raises an issue of general interest or applicability of national significance to the implementation of part B, the Secretary shall— "(1) include a statement to that effect in any written response;

Editorial Notes

Use of quotation marks: The use of quotation marks (" ") in this section signifies verbatim quotations from the new law. As in the law itself, each quoted paragraph begins with a quotation mark. The closing quotation mark is placed at the end of the entire passage being quoted (not at the end of every paragraph). If material is not in quotes, it is a summary provided by the editor, NOT a verbatim quotation from the law.

Use of brackets: Within the verbatim quotations from the new law, you may find text *within* brackets [ ]. The material in brackets is NOT part of IDEA 97—it is information provided by the editor to explain references made within the law to other sections or paragraphs of the statute. Brackets at the *end* of a quotation indicate where, in the statute, you can find the text being quoted.

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	"(2) widely disseminate that response to State educational agencies, local educational agencies, parent and advocacy organizations, and other interested organizations, subject to applicable laws relating to confidentiality of information; and "(3) not later than one year after the date on which the Secretary responds to the written request, issue written guidance on such policy, question, or interpretation through such means as the Secretary determines to be appropriate and consistent with law, such as a policy memorandum, notice of interpretation, or notice of proposed rulemaking. "(f) EXPLANATION.—Any written response by the Secretary under subsection (e) regarding a policy, question, or interpretation under part B of this Act shall include an explanation that the written response— "(1) is provided as informal guidance and is not legally binding; and "(2) represents the interpretation by the Department of Education of the applicable statutory or regulatory requirements in the context of the specific facts presented." [Section 607(e) through (f)]

Part B: Assistance for Education of All Children with Disabilities

Old Law *State Eligibility*	*New Law* *Section 612—State Eligibility*
★ *State eligibility in general:* Under the old IDEA, State plans needed to be in place.	★ *State eligibility in general:* State applications need to be submitted only once and thereafter only amendments need to be submitted, as necessitated by official findings of compliance problems, by changes in law or regulations designed to carry out the law, or by changes in interpretation of the law by a Federal court or a State's highest court. [Section 612(c)]
★ *Child find:* Regardless of the severity of their disability, children with disabilities were to be identified, located, and evaluated.	★ *Child find:* The new law maintains prior requirements and clarifies that a State's child find efforts must include children in private schools. "(A) IN GENERAL.—All children with disabilities residing in the State, including children with disabilities attending private schools, regardless of the severity of their disabilities, and who are in need of special education and related services, are identified, located, and evaluated and a practical method is developed and implemented to determine which children with disabilities are currently receiving needed special education and related services.

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	"(B) CONSTRUCTION.—Nothing in this Act requires that children be classified by their disability so long as each child who has a disability listed in section 602 and who, by reason of that disability, needs special education and related services is regarded as a child with a disability under this part." [Section 612(a)(3)]
★ *Least restrictive environment:* Under the previous legislation, States had to establish procedures to assure LRE.	★ *Least restrictive environment:* The new law maintains the prior LRE definition and requirements and adds that, if a State's funding formula is not consistent with LRE, an assurance must be provided that it will be. "(i) IN GENERAL.—If the State uses a funding mechanism by which the State distributes State funds on the basis of the type of setting in which a child is served, the funding mechanism does not result in placements that violate the requirements of subparagraph (A) [the definition of LRE]. "(ii) ASSURANCE.—If the State does not have policies and procedures to ensure compliance with clause (i), the State shall provide the Secretary an assurance that it will revise the funding mechanism as soon as feasible to ensure that such mechanism does not result in such placements." [Section 612(a)(5)(B)(i) and (ii)]
★ *Procedural safeguards:* States had to have policies and procedures consistent with the provisions in Section 615.	★ *Procedural safeguards:* The new law adds specific requirements regarding nondiscriminatory testing. "(B) ADDITIONAL PROCEDURAL SAFEGUARDS.—Procedures to ensure that testing and evaluation materials and procedures utilized for the purposes of evaluation and placement of children with disabilities will be selected and administered so as not to be racially or culturally discriminatory. Such materials or procedures shall be provided and administered in the child's native language or mode of communication, unless it clearly is not feasible to do so, and no single procedure shall be the sole criterion for determining an appropriate educational program for a child." [Section 612(a)(6)(B)]
★ *Transition from Infant & Toddler program to Preschool program:* The old law identified requirements for transitioning a child from an infant/toddler program to a preschool program.	★ *Transition from Infant & Toddler program to Preschool program:* The new law maintains the prior requirements and adds the requirement that the LEA participate in transition planning conferences. [Section 612(a)(9)]
★ *Placement in private school:* The old law provided for public services for children in private schools, under certain circumstances.	★ *Placement in private school:* The new law makes clear that a proportionate amount of IDEA funds must be spent on children with disabilities placed in private schools by their parents. "(A) CHILDREN ENROLLED IN PRIVATE SCHOOLS BY THEIR PARENTS.— (i) IN GENERAL.—To the extent consistent with the number and location of children with disabilities in the State who are enrolled by their parents in private elementary and secondary schools, provision is made for the participation of those children in the program assisted or carried out under this part by providing for such children special education and related services in accordance with the following requirements, unless the Secretary has arranged for services to those children under subsection (f):

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"(I) Amounts expended for the provision of those services by a local educational agency shall be equal to a proportionate amount of Federal funds made available under this part. (II) Such services may be provided to children with disabilities on the premises of private, including parochial, schools, to the extent consistent with law.

"(ii) CHILD-FIND REQUIREMENT.—The requirements of paragraph (3) of this subsection (relating to child find) shall apply with respect to children with disabilities in the State who are enrolled in private, including parochial, elementary and secondary schools." [Section 612(a)(10)(A)]

★ *Private school placements without consent of public agency:* Reimbursement was available in certain circumstances.

★ *Private school placements without consent of public agency:* The new law requires parents to provide notice that they intend to transfer their child to a private school. If parents do not provide notice, reimbursement for this private school placement may be reduced or denied, with certain exceptions. Other limitations are also included.

"(ii) REIMBURSEMENT FOR PRIVATE SCHOOL PLACEMENT.—If the parents of a child with a disability, who previously received special education and related services under the authority of a public agency, enroll the child in a private elementary or secondary school without the consent of or referral by the public agency, a court or a hearing officer may require the agency to reimburse the parents for the cost of that enrollment if the court or hearing officer finds that the agency had not made a free appropriate public education available to the child in a timely manner prior to that enrollment.

"(iii) LIMITATION OF REIMBURSEMENT.—The cost of reimbursement described in clause (ii) may be reduced or denied—(I) if—

If parents do not notify school prior to transferring their child to a private school, the amount of reimbursement for the private placement may be reduced or denied.

"(aa) at the most recent IEP meeting that the parents attended prior to removal of the child from the public school, the parents did not inform the IEP team that they were rejecting the placement proposed by the public agency to provide a free appropriate public education to their child, including stating their concerns and their intent to enroll their child in a private school at public expense; or

"(bb) 10 business days (including any holidays that occur on a business day) prior to the removal of the child from the public school, the parents did not give written notice to the public agency of the information described in division (aa);

"(II) if, prior to the parents' removal of the child from the public school, the public agency informed the parents, through the notice requirements described in section 615(b)(7), of its intent to evaluate the child (including a statement of the purpose of the evaluation that was appropriate and reasonable), but the parents did not make the child available for such evaluation; or

"(III) upon a judicial finding of unreasonableness with respect to actions taken by the parents.

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Exceptions to the notification requirements for parents

"(iv) EXCEPTION.—Notwithstanding the notice requirement in clause (iii)(I), the cost of reimbursement may not be reduced or denied for failure to provide such notice if— (I) the parent is illiterate and cannot write in English; (II) compliance with clause (iii)(I) would likely result in physical or serious emotional harm to the child; (III) the school prevented the parent from providing such notice; or (IV) the parents had not received notice, pursuant to section 615 [procedural safeguards], of the notice requirement in clause (iii)(I)." [Section 612(a)(10)(C)]

★ *Personnel standards:* The prior legislation required that (a) personnel had to be appropriately and adequately trained; (b) a State had to establish and maintain standards; and (c) when personnel did not meet the highest State standard for a specific profession or discipline, a State had to specify the steps it intended to take to retrain or hire personnel who did meet State standards.

★ *Personnel standards:* The new law maintains prior requirements regarding personnel standards and adds that the standards shall allow the use of paraprofessionals under certain conditions and allows a State to adopt a policy to allow the use of the most qualified persons available under certain conditions.

"(B) STANDARDS DESCRIBED.—Such standards shall...(iii) allow paraprofessionals and assistants who are appropriately trained and supervised, in accordance with State law, regulations, or written policy, in meeting the requirements of this part to be used to assist in the provision of special education and related services to children with disabilities under this part [Part B].

"(C) POLICY.—In implementing this paragraph, a State may adopt a policy that includes a requirement that local educational agencies in the State make an ongoing good-faith effort to recruit and hire appropriately and adequately trained personnel to provide special education and related services to children with disabilities, including, in a geographic area of the State where there is a shortage of such personnel, the most qualified persons available who are making satisfactory progress toward completing applicable course work necessary" to meet the State standards within three years. [Section 612 (a)(15)(B)(iii) and 612(a)(15)(C)]

★ *Performance goals and indicators:* No similar provisions existed in the old IDEA.

★ *Performance goals and indicators:* The new law requires the State to establish goals for the performance of children with disabilities and to develop indicators to judge children's progress. A State must revise its State improvement plan based on assessment results, if it receives funds under subpart 1 of Part D.

The new IDEA requires States to establish performance goals and indicators for children with disabilities.

"The State—

"(A) has established goals for the performance of children with disabilities in the State that—(i) will promote the purposes of this Act, as stated in 601(d); and (ii) are consistent, to the maximum extent appropriate, with other goals and standards for children established by the State;

"(B) has established performance indicators the State will use to assess progress toward achieving those goals that, at a minimum, address the performance of children with disabilities on assessments, drop-out rates, and graduation rates;

"(C) will, every two years, report to the Secretary and the public on the progress of the State, and of children with

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disabilities in the State, toward meeting the goals established under subparagraph (A); and

"(D) based on its assessment of that progress, will revise its State improvement plan under subpart 1 of part D as may be needed to improve its performance, if the State receives assistance under that subpart." [Section 612(a)(16)]

★ *Participation in assessments:* No similar provisions existed in the old IDEA.

★ *Participation in assessments:* States are now required to include children with disabilities, with accommodations when necessary, in State and districtwide assessment programs. Alternative assessments must be developed for children who cannot participate in regular assessments by 2000. Results must be reported (while protecting individual children's identities).

"(A) IN GENERAL.—Children with disabilities are included in general State and district-wide assessment programs, with appropriate accommodations, where necessary. As appropriate, the State or local educational agency—(i) develops guidelines for the participation of children with disabilities in alternate assessments for those children who cannot participate in State and district-wide assessment programs; and (ii) develops and, beginning no later than July 1, 2000, conducts those alternate assessments.

"(B) REPORTS.—The State educational agency makes available to the public, and reports to the public with the same frequency and in the same detail as it reports on the assessment of nondisabled children, the following:

Including children with disabilities in State and districtwide assessments and developing alternate assessments

"(i) the number of children with disabilities participating in regular assessments.

"(ii) the number of those children participating in alternate assessments.

"(iii)(I) The performance of those children on regular assessments (beginning no later than July 1, 1998) and on alternate assessments (no later than July 1, 2000), if doing so would be statistically sound and would not result in the disclosure of performance results identifiable to individual children.

"(II) Data relating to the performance of children described under subclause (I) shall be disaggregated—(aa) for assessments conducted after July 1, 1998; and (bb) for assessments conducted before July 1, 1998 if the State is required to disaggregate such data prior to July 1, 1998." [Section 612 (a)(17)]

★ *State Advisory Panel:* The old law addressed panel membership and duties in more general terms.

★ *State Advisory Panel:* The new law describes in more detail both panel duties and membership, including representation from private and charter schools and from State juvenile and adult corrections agencies. A majority of the members must be individuals with disabilities or parents of children with disabilities.

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Membership in State Advisory Panel	"(B) MEMBERSHIP.—Such advisory panel shall consist of members appointed by the Governor, or any other official authorized under State law to make such appointments, that is representative of the State population and that is composed of individuals involved in, or concerned with, the education of children with disabilities, including— "(i) parents of children with disabilities; (ii) individuals with disabilities; (iii) teachers; (iv) representatives of institutions of higher education that prepare special education and related services personnel; (v) State and local education officials; (vi) administrators of programs for children with disabilities; (vii) representatives of other State agencies involved in the financing or delivery of related services to children with disabilities; (viii) representatives of private schools and public charter schools; (ix) at least one representative of a vocational, community, or business organization concerned with the provision of transition services to children with disabilities; and (x) representatives from the State juvenile and adult corrections agencies. "(C) SPECIAL RULE.—A majority of the members of the panel shall be individuals with disabilities or parents of children with disabilities." [Section 612(a)(21)]
★ *Charter schools:* No provisions specific to charter schools existed in the old IDEA.	★ *Charter schools*: The new law added several provisions specific to charter schools. First, it requires that an LEA serve children with disabilities attending charter schools that are public schools of the LEA in the same manner as it serves children with disabilities in its other schools. An LEA must also provide funds to these charter schools in the same manner as it provides those funds to its other schools. [Section 613(a)(5)] A second new provision with regard to charter schools is as follows: "(1) JOINT ESTABLISHMENT.— "(A) IN GENERAL.—A State educational agency may require a local educational agency to establish its eligibility jointly with another local educational agency if the State educational agency determines that the local educational agency would be ineligible under this section because the local educational agency would not be able to establish and maintain programs of sufficient size and scope to effectively meet the needs of children with disabilities. "(B) CHARTER SCHOOL EXCEPTION.—A State educational agency may not require a charter school that is a local educational agency to jointly establish its eligibility under subparagraph (A) unless it is explicitly permitted to do so under the State's charter school statute." [Section 613(e)(1)]

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★ *Services to prisoners in adult prisons:* No prison-specific provisions existed in the old IDEA.

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★ ***Services to prisoners in adult prisons:*** **The new IDEA authorizes the Governor to transfer from the State Education Agency (SEA) to another agency (e.g., a State correctional agency) the general supervisory responsibility for educating juveniles with disabilities who have been convicted as adults under State law and incarcerated in adult prisons [Section 612(a)(11)(C)]. Additionally, the new legislation relieves the State from complying with certain requirements relating to assessments and transition services. If the State demonstrates a good faith security or compelling penological interest that cannot otherwise be accommodated, the IEP Team may modify such a child's IEP or placement [Section 614(d)(6)].**

Provisions regarding children with disabilities in adult prisons

"(C) EXCEPTION.—Notwithstanding subparagraphs (A) and (B), the Governor (or another individual pursuant to State law), consistent with State law, may assign to any public agency in the State the responsibility of ensuring the requirements of this part are met with respect to children with disabilities who are convicted as adults under State law and incarcerated in adult prisons." [Section 612(a)(11)(C)]

"(6) CHILDREN WITH DISABILITIES IN ADULT PRISONS.—(A) IN GENERAL.—The following requirements do not apply to children with disabilities who are convicted as adults under State law and incarcerated in adult prisons:

"(i) The requirements contained in section 612(a)(17) and paragraph (1)(A)(v) of this subsection (relating to participation of children with disabilities in general assessments).

"(ii) The requirements of subclauses (I) and (II) of paragraph (1)(A)(vii) of this subsection (relating to transition planning and transition services), do not apply with respect to such children whose eligibility under this part will end, because of their age, before they are released from prison.

"(B) ADDITIONAL REQUIREMENT.—If a child with a disability is convicted as an adult under State law and incarcerated in an adult prison, the child's IEP Team may modify the child's IEP or placement notwithstanding the requirements of sections 612(a)(5)(A) [least restrictive environment] and 614(d)(1)(A) [definition of the IEP] if the State has demonstrated a bona fide security or compelling penological interest that cannot otherwise be accommodated." [Section 614(d)(6)]

Old Law:
Evaluations, Eligibility Determinations, IEPs, and Educational Placements

★ *Parent participation in eligibility decisions:* The old law did not require schools to involve parents in decision-making regarding whether a child was eligible for special education and related services.

New Law—Section 614
Evaluations, Eligibility Determinations, IEPs, and Educational Placements

★ *Parent participation in eligibility decisions:* Under the new law, parents are specifically included as members of the group making the decision regarding a child or youth's eligibility for services.

"(4) DETERMINATION OF ELIGIBILITY.—Upon completion of administration of tests and other evaluation materials—

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"(A) the determination of whether the child is a child with a disability as defined in section 602(3) shall be made by a team of qualified professionals and the parent of the child in accordance with paragraph (5) [see below]; and

"(B) a copy of the evaluation report and the documentation of determination of eligibility will be given to the parent.

"(5) SPECIAL RULE FOR ELIGIBILITY DETERMINATION.—In making a determination of eligibility under paragraph (4)(A), a child shall not be determined to be a child with a disability if the determinant factor for such determination is lack of instruction in reading or math or limited English proficiency." [Section 614(b)(4)]

★ *Individualized Education Program (IEP).* The old law listed specific components to be included in each child's IEP.

★ *Individualized Education Program (IEP):* Except for those provisions covering youth convicted as adults and incarcerated in adult prisons (see above), **IEP provisions under the new law do not take effect until July 1, 1998.** The new law requires that additional information be provided under most components of the IEP. Additional emphasis is placed on identifying the supplementary supports and services needed to enable the child to be educated in the regular classroom and with the general curriculum. New requirements include identifying the extent to which the child will participate in State or districtwide assessment. Schools are now required to report regularly to parents upon the child's progress toward the annual goals.

Components to be included in the IEP are:

New language emphasizes student participation in the general curriculum.

"(i) a statement of the child's present levels of educational performance, including— (I) how the child's disability affects the child's involvement and progress in the general curriculum; or (II) for preschool children, as appropriate, how the disability affects the child's participation in appropriate activities;

"(ii) a statement of measurable annuals goals, including benchmarks or short-term objectives, related to—(I) meeting the child's needs that result from the child's disability to enable the child to be involved in and progress in the general curriculum; and (II) meeting each of the child's other educational needs that result from the child's disability;

"(iii) a statement of the special education and related services and supplementary aids and services to be provided to the child, or on behalf of the child, and a statement of program modifications or supports for school personnel that will be provided for the child—(I) to advance appropriately toward attaining the annual goals; (II) to be involved and progress in the general curriculum in accordance with clause (i) and to participate in extracurriculuar and other nonacademic activities; and (III) to be educated and participate with other children with disabilities and nondisabled children in the activities described in this paragraph;

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"(iv) an explanation of the extent, if any, to which the child will not participate with nondisabled children in the regular class and in the activities described in clause (iii);

New IEP requirements re: student participation in State or districtwide assessment

"(v)(I) a statement of any individual modifications in the administration of State or districtwide assessments of student achievement that are needed in order for the child to participate in such assessment; and (II) if the IEP Team determines that the child will not participate in a particular State or districtwide assessment of student achievement (or part of such an assessment), a statement of—(aa) why that assessment is not appropriate for the child; and (bb) how the child will be assessed;

"(vi) the projected date for the beginning of the services and modifications described in clause (iii), and the anticipated frequency, location, and duration of those services and modifications;

New requirement re: statement of transition service needs in IEP

Old law required only a statement of transition services beginning at age 16, and this is still required.

"(vii)(I) beginning at age 14, and updated annually, a statement of the transition service needs of the child under the applicable components of the child's IEP that focuses on the child's courses of study (such as participation in advanced-placement courses or a vocational education program); (II) beginning at age 16 (or younger, if determined appropriate by the IEP team), a statement of needed transition services for the child, including, when appropriate, a statement of the interagency responsibilities or any needed linkages; and (III) beginning at least one year before the child reaches the age of majority under State law, a statement that the child has been informed of his or her rights under this title, if any, that will transfer to the child on reaching the age of majority under section 615(m); and

New requirement re: statement that student has been informed of his or her rights, if any, that will transfer at age of majority

"(viii) a statement of—(I) how the child's progress toward the annual goals described in clause (ii) will be measured; and (II) how the child's parents will be regularly informed (by such means as periodic report cards), at least as often as parents are informed of their nondisabled children's progress, of—(aa) their child's progress toward the annual goals described in clause (ii); and (bb) the extent to which that progress is sufficient to enable the child to achieve the goals by the end of the year." [Section 614(d)(1)(A)(i) through (viii)]

New requirements re: reporting student progress to parents

★ *Development of the IEP:* No similar provisions existed in the old IDEA.

★ *Development of the IEP:* The new law adds specific factors that the IEP team must consider when developing a child's IEP, including, most notably, behavior issues and the specific communication needs of the child, if he or she is blind or visually impaired, of limited English proficiency, or deaf or hard of hearing.

"(A) IN GENERAL.—In developing each child's IEP, the IEP Team, subject to subparagraph (C), shall consider—(i) the strengths of the child and the concerns of the parents for enhancing the education of their child; and (ii) the results of the initial evaluation or most recent evaluation of the child.

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Important new IEP requirements for considering:	"(B) CONSIDERATION OF SPECIAL FACTORS.—The IEP Team shall—
— *behavior issues and developing positive behavioral support strategies*	"(i) in the case of a child whose behavior impedes his or her learning or that of others, consider, when appropriate, strategies, including positive behavioral interventions, strategies, and supports to address that behavior;
— *language needs of LEP students*	"(ii) in the case of a child with limited English proficiency, consider the language needs of the child as such needs relate to the child's IEP;
— *A blind or visually impaired student's need for Braille or use of Braille*	"(iii) in the case of a child who is blind or visually impaired, provide for instruction in Braille and the use of Braille unless the IEP Team determines, after an evaluation of the child's reading and writing skills, needs, and appropriate reading and writing media (including an evaluation of the child's future needs for instruction in Braille or the use of Braille), that instruction in Braille or the use of Braille is not appropriate for the child;
— *the communication needs of children who are deaf or hard of hearing*	"(iv) consider the communication needs of the child, and in the case of a child who is deaf or hard of hearing, consider the child's language and communication needs, opportunities for direct communications with peers and professional personnel in the child's language and communication mode, academic level, and full range of needs, including opportunities for direct instruction in the child's language and communication mode; and
— *a child's need for assistive devices and services*	"(v) consider whether the child requires assistive devices and services.
Important new requirements re: involvement of the regular education teacher	"(C) REQUIREMENT WITH RESPECT TO REGULAR EDUCATION TEACHER.—The regular education teacher of the child, as a member of the IEP Team, shall, to the extent appropriate, participate in the development of the IEP of the child, including the determination of appropriate positive behavioral interventions and strategies and the determination of supplementary aids and services, program modifications, and support for school personnel consistent with paragraph (1)(A)(iii)." [Section 614(d)(3)]
★ ***Review and revision of the IEP:*** Under the old IDEA, the IEP was to be reviewed and revised at least annually.	★ *Review and revision of the IEP:* The new law maintains prior requirements and adds new language emphasizing revision of the IEP as appropriate.
	"(A) IN GENERAL.—The local educational agency shall ensure that, subject to subparagraph (B) [see above, "Consideration of Special Factors"], the IEP Team—
	"(i) reviews the child's IEP periodically, but not less than annually to determine whether the annual goals for the child are being achieved; and
	"(ii) revises the IEP as appropriate to address—(I) any lack of expected progress toward the annual goals and in the general curriculum, where appropriate; (II) the results of any reevaluation conducted under this section; (III) infor-

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	mation about the child provided to, or by, the parents, as described in subsection (c)(1)(B) [see page 24, "(c) Additional requirements for evaluation and reevaluations"]; (IV) the child's anticipated needs; or (V) other matters. "(B) REQUIREMENT WITH RESPECT TO REGULAR EDUCATION TEACHER. —The regular education teacher of the child, as a member of the IEP Team, shall, to the extent appropriate, participate in the review and revision of the IEP of the child." [Section 614(d)(4)]
★ *IEP Team:* Members of the IEP Team were specified in the old IDEA.	★ *IEP Team:* The new law maintains prior requirements regarding IEP Team membership and adds members to the team, including the regular education teacher. The IEP Team, then, is a group composed of: "(i) the parents of a child with a disability; "(ii) at least one regular education teacher of such child (if the child is, or may be, participating in the regular education environment); *The regular education teacher is specifically mentioned as being part of the IEP Team.* "(iii) at least one special education teacher, or where appropriate, at least one special education provider of such child; "(iv) a representative of the local educational agency who—(I) is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of children with disabilities; (II) is knowledgeable about the general curriculum; and (III) is knowledgeable about the availability of resources of the local education agency; "(v) an individual who can interpret the instructional implications of evaluation results, who may be a member of the team described in clauses (ii) through (vi); "(vi) at the discretion of the parent or the agency, other individuals who have knowledge or special expertise regarding the child, including related services personnel as appropriate; and "(vii) whenever appropriate, the child with a disability." [Section 614(d)(1)(B)]
★ *Parent participation in placement decisions:* Parents had the right to consent to or refuse decisions regarding their child's initial placement. However, the Federal statute did not require that they be a member of the team making the placement decision.	★ *Parent participation in placement:* The new law explicitly states parents' right to be involved in all placement decisions regarding their child. Unlike IEP changes, this change takes effect immediately. "(f) EDUCATIONAL PLACEMENTS.—Each local educational agency or State educational agency shall ensure that the parents of each child with a disability are members of any group that makes decisions on the educational placement of their child." [Section 614(f)]

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★ *Evaluation and reevaluation of students:* Under Federal regulations to the old IDEA, each student with disabilities was initially evaluated to determine if he or she was a "child with a disability," as defined within IDEA, and what his or her present levels of educational performance and educational need were. Each student receiving special education and related services was also reevaluted every three years in all areas related to his or her disability. The data gathered through this reevaluation generally were used to determine if the student continued to be a "child with a disability" and what his or her present levels of educational performance and needs were.

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★ *Evaluation and reevaluation of students:* IDEA 97 makes significant changes to the evaluation process by beginning with a review of existing evaluation data on the student. If sufficient information exists to make certain determinations, then the LEA is not required to conduct additional testing or other evaluation procedures. (However, in the case of a reevaluation, if parents request the reevaluation for the purpose of determining if the child continues to be a "child with a disability," then the LEA must conduct it.) If data are needed in a particular area, then the child would be evaluated in that area. Parents must give their informed consent before any evaluation can be conducted.

"(a) EVALUATIONS AND REEVALUATIONS.—

"(1) INITIAL EVALUATIONS.—

"(A) IN GENERAL.—A State educational agency, other State agency, or local educational agency shall conduct a full and individual initial evaluation, in accordance with this paragraph and subsection (b), before the initial provision of special education and related services to a child with a disability under this part.

Requirements for initial evaluations still include a full and individual evaluation before special education and related services may be provided to the child.

"(B) PROCEDURES.—Such initial evaluation shall consist of procedures—(i) to determine whether a child is a child with a disability (as defined in section 602(3)); and (ii) to determine the educational needs of such child.

"(C) PARENTAL CONSENT.—

Parental consent for the child's initial evaluation is still required.

"(i) IN GENERAL.—The agency proposing to conduct an initial evaluation to determine if the child qualifies as a child with a disability as defined in section 602(3)(A) or 602(3)(B) shall obtain an informed consent from the parent of such child before the evaluation is conducted. Parental consent for evaluation shall not be construed as consent for placement for receipt of special education and related services.

"(ii) REFUSAL.—If the parents of such child refuse consent for the evaluation, the agency may continue to pursue an evaluation by utilizing the mediation and due process procedures under section 615, except to the extent inconsistent with State law relating to parental consent.

"(2) REEVALUATIONS.—A local educational agency shall ensure that a reevaluation of each child with a disability is conducted—(A) if conditions warrant a reevaluation or if the child's parent or teacher requests a reevaluation, but at least once every 3 years; and (B) in accordance with subsections (b) and (c).

A reevaluation of the student is still required at least once every 3 years, but new requirements have been added—these are listed on page 24.

"(b) EVALUATION PROCEDURES.—

"(1) NOTICE.—The local educational agency shall provide notice to the parents of a child with a disability, in accordance with subsections (b)(3), (b)(4), and (c) of section 615, that describes any evaluation procedures such agency proposes to conduct.

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"(2) CONDUCT OF EVALUATION.—In conducting the evaluation, the local educational agency shall—

"(A) use a variety of assessment tools and strategies to gather relevant functional and developmental information, including information provided by the parent, that may assist in determining whether the child is a child with a disability and the content of the child's individualized education program, including information related to enabling the child to be involved in and progress in the general curriculum or, for preschool children, to participate in appropriate activities;

New emphasis in the evaluation upon gathering information that is instructionally relevant—i.e., that can be used to determine the content of the child's IEP and to help the child progress in the general curriculum (or, for preschoolers, in appropriate activities)

"(B) not use any single procedure as the sole criterion for determining whether a child is a child with a disability or determining an appropriate educational program for the child; and

"(C) use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors.

"(3) ADDITIONAL REQUIREMENTS.—Each local educational agency shall ensure that—

"(A) tests and other evaluation materials used to assess a child under this section—(i) are selected and administered so as not to be discriminatory on a racial or cultural basis; and (ii) are provided and administered in the child's native language or other mode of communication, unless it is clearly not feasible to do so; and

"(B) any standardized tests that are given to the child—(i) have been validated for the specific purpose for which they are used; (ii) are administered by trained and knowledgeable personnel; and (iii) are administered in accordance with any instructions provided by the producer of such tests;

"(C) the child is assessed in all areas of suspected disability; and

"(D) assessment tools and strategies that provide relevant information that directly assists persons in determining the educational needs of the child are provided.

New provision: Parents are part of the group that makes the determination of eligibility.

"(4) DETERMINATION OF ELIGIBILITY.—Upon completion of administration of tests and other evaluation materials—(A) the determination of whether the child is a child with a disability as defined in section 602(3) shall be made by a team of qualified professionals and the parent of the child in accordance with paragraph (5); and (B) a copy of the evaluation report and the documentation of determination of eligibility will be given to the parent.

"(5) SPECIAL RULE FOR ELIGIBILITY DETERMINATION.—In making a determination of eligibility under paragraph (4)(A), a child shall not be determined to be a child with a disability if the determinant factor for such determination is lack of instruction in reading or math or limited English proficiency.

"Special Rule for Eligibility Determination"

"(c) ADDITIONAL REQUIREMENTS FOR EVALUATION AND REEVALUATIONS.—

"(1) REVIEW OF EXISTING EVALUATION DATA.—As part of an initial evaluation (if appropriate) and as part of any reevaluation under this section, the IEP Team described in subsection (d)(1)(B) and other qualified professionals, as appropriate, shall—

In the evaluation of students, either initially or every three years, schools must review existing evaluation data, identify what data they have and what additional data are needed, and assess the student in the area where data are needed.

"(A) review existing evaluation data on the child, including evaluations and information provided by the parents of the child, current classroom-based assessments and observations, and teacher and related services providers observation; and

"(B) on the basis of that review, and input from the child's parents, identify what additional data, if any, are needed to determine—

"(i) whether the child has a particular category of disability, as described in section 602(3), or, in the case of a reevaluation of a child, whether the child continues to have such a disability; (ii) the present levels of performance and educational needs of the child; (iii) whether the child needs special education and related services, or in the case of a reevaluation of a child, whether the child continues to need special education and related services; and (iv) whether any additions or modifications to the special education and related services are needed to enable the child to meet the measurable annual goals set out in the individualized education program of the child and to participate, as appropriate, in the general curriculum.

"(2) SOURCE OF DATA.—The local educational agency shall administer such tests and other evaluation materials as may be needed to produce the data identified by the IEP Team under paragraph (1)(B).

Parental consent is now needed for reevaluating a student (unless parents fail to respond to requests for consent).

"(3) PARENTAL CONSENT.—Each local educational agency shall obtain informed parental consent, in accordance with subsection (a)(1)(C), prior to conducting any reevaluation of a child with a disability, except that such informed parent consent need not be obtained if the local educational agency can demonstrate that it had taken reasonable measures to obtain such consent and the child's parent has failed to respond.

If no additional data are needed to determine if the child continues to be a "child with a disability," the LEA is not required to conduct such an assessment of the child...

...unless requested to by the child's parents [see provision on next page].

"(4) REQUIREMENTS IF ADDITIONAL DATA ARE NOT NEEDED.—If the IEP Team and other qualified professionals, as appropriate, determine that no additional data are needed to determine whether the child continues to be a child with a disability, the local educational agency—

"(A) shall notify the child's parents of—(i) that determination and the reasons for it; and (ii) the right of such parents to request an assessment to determine whether the child continues to be a child with a disability; and

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"(B) shall not be required to conduct such an assessment unless requested to by the child's parents.

"(5) EVALUATIONS BEFORE CHANGE IN ELIGIBILITY.—A local educational agency shall evaluate a child with a disability in accordance with this section before determining that the child is no longer a child with a disability." [Section 614(c)]

Old Law:
Procedural Safeguards

★ *Prior written notice:* The parents or guardians were entitled to receive prior written notice whenever an agency proposed (or refused) to initiate or change the identification, evaluation, or placement of the child or the provision of FAPE.

New Law—Section 615
Procedural Safeguards

★ *Prior written notice:* IDEA 97 requires prior written notice in certain circumstances and a procedural safeguards notice under certain circumstances.

"(b) TYPES OF PROCEDURES.—The procedures required by this section shall include—

"...(3) written prior notice to the parents of the child whenever such agency—(A) proposes to initiate or change; or (B) refuses to initiate or change; the identification, evaluation, or educational placement of the child, in accordance with subsection (c), or the provision of a free appropriate public education to the child;

IDEA 97 maintains requirements for providing parents with prior written notice.

"(4) procedures designed to ensure that the notice required by paragraph (3) is in the native language of the parents, unless it clearly is not feasible to do so..." [Section 615(b)(3) and (4)]

"(c) CONTENT OF PRIOR WRITTEN NOTICE.—The notice required by subsection (b)(3) shall include—

"(1) a description of the action proposed or refused by the agency; (2) an explanation of why the agency proposes or refuses to take the action; (3) a description of any other options that the agency considered and the reasons why those options were rejected; (4) a description of each evaluation procedure, test, record, or report the agency used as a basis for the proposed or refused action; (5) a description of any other factors that are relevant to the agency's proposal or refusal; (6) a statement that the parents of a child with a disability have protection under the procedural safeguards of this part and, if this notice is not an initial referral for evaluation, the means by which a copy of a description of the procedural safeguards can be obtained; and (7) sources for parents to contact to obtain assistance in understanding the provisions of this part.

The prior written notice must notify parents about procedural safeguards available under IDEA.

"(d) PROCEDURAL SAFEGUARDS NOTICE.—

"(1) IN GENERAL.—A copy of the procedural safeguards available to the parents of a child with a disability shall be given to parents, at a minimum— (A) upon initial referral for evaluation; (B) upon each notification of an individualized education program meeting and upon reevaluation of the child; and (C) upon registration of a complaint under subsection (b)(6).

Under what circumstances, at a minimum, parents must be given a full explanation of procedural safeguards.

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	"(2) CONTENTS.—The procedural safeguards notice shall include a full explanation of the procedural safeguards, written in the native language of the parents, unless it clearly is not feasible to do so, and written in an easily understandable manner, available under this section and under regulations promulgated by the Secretary relating to— (A) independent educational evaluation; (B) prior written notice; (C) parental consent; (D) access to educational records; (E) opportunity to present complaints; (F) the child's placement during pendency of due process proceedings; (G) procedures for students who are subject to placement in an interim alternative educational setting; (H) requirements for unilateral placement by parents of children in private schools at public expense; (I) mediation; (J) due process hearings, including requirements for disclosure of evaluation results and recommendations; (K) State-level appeals (if applicable in that State); (L) civil actions; and (M) attorneys' fees." [Section 615(b)(3) and (4) and 615(c) and (d)]
	What topics the full explanation of procedural safeguards must address
★ ***Notification by parents for filing a complaint:*** No similar provisions existed in the old law.	★ *Notification by parents for filing a complaint:* The new law adds a requirement that parents filing a complaint must provide the State educational agency or local educational agency with notice. The notice must contain specific information.
	"(b) TYPES OF PROCEDURES.—The procedures required by this section shall include—
	"...(7) procedures that require the parent of a child with a disability, or the attorney representing the child, to provide notice (which shall remain confidential)—
	New requirement for parents filing a complaint
	"(A) to the State educational agency or local educational agency, as the case may be, in the complaint filed under paragraph (6) [any complaint relating to the identification, evaluation, or educational placement of the child, or the provision of FAPE to the child]; and
	What information parents need to include in their notice of complaint
	"(B) that shall include—(i) the name of the child, the address of the residence of the child, and the name of the school the child is attending; (ii) a description of the nature of the problem of the child relating to such proposed initiation or change, including facts relating to such problem; and (iii) a proposed resolution of the problem to the extent known and available to the parents at the time; and
	"(8) procedures that require the State educational agency to develop a model form to assist parents in filing a complaint in accordance with paragraph (7)." [Section 615(b)(7) and (8)]
★ ***Mediation:*** No similar provisions existed under the old law, although mediation was a permissible activity.	★ *Mediation:* The new law requires States to establish a mediation system in which parents and schools may voluntarily participate. The law specifies mediation requirements as follows:

The new mediation process

"(e) MEDIATION.—

"(1) IN GENERAL.—Any State educational agency or local educational agency that receives assistance under this part shall ensure that procedures are established and implemented to allow parties to disputes involving any matter described in subsection (b)(6) to resolve such disputes through a mediation process which, at a minimum, shall be available whenever a hearing is requested under subsection (f) or (k).

"(2) REQUIREMENTS.—Such procedures shall meet the following requirements:

"(A) The procedures shall ensure that the mediation process— (i) is voluntary on the part of the parties; (ii) is not used to deny or delay a parent's right to a due process hearing under subsection (f) or to deny any other rights afforded under this part; and (iii) is conducted by a qualified and impartial mediator who is trained in effective mediation techniques.

"(B) A local educational agency or a State agency may establish procedures to require parents who choose not to use the mediation process to meet, at a time and location convenient to the parents, with a disinterested party who is under contract with— (i) a parent training and information center or community parent resource center in the State established under section 682 or 683; or (ii) an appropriate alternative dispute resolution entity; to encourage the use, and explain the benefits, of the mediation process to the parents.

"(C) The State shall maintain a list of individuals who are qualified mediators and knowledgeable in laws and regulations relating to the provision of special education and related services.

"(D) The State shall bear the cost of the mediation process, including the costs of meetings described in subparagraph (B).

"(E) Each session in the mediation process shall be scheduled in a timely manner and shall be held in a location that is convenient to the parties to the dispute.

"(F) An agreement reached by the parties to the dispute in the mediation process shall be set forth in a written mediation agreement.

"(G) Discussions that occur during the mediation process shall be confidential and may not be used as evidence in any subsequent due process hearing or civil proceedings and the parties to the mediation process may be required to sign a confidentiality pledge prior to the commencement of such process." [Section 615(e)]

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★ *Disclosure of evaluations and recommendations:* The old IDEA's regulations regarding disclosure exist at 34 CFR 300.508 (a)(3) and provided that at a hearing the introduction of any evidence that has not been disclosed to the other party at least five days before the hearing was prohibited.

★ *Prohibition of attorney's fees and related costs:* The old law stipulated that no attorneys' fees could be awarded subsequent to the time of a written offer of settlement under certain circumstances.

Circumstances under which attorneys' fees may be reduced

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★ *Disclosure of evaluations and recommendations:* IDEA 97 adds a provision that, at least 5 business days before a hearing, each party must disclose all evaluations and recommendations. Any party failing to meet this requirement may be barred from introducing this evidence, unless the other party consents.

"(2) DISCLOSURE OF EVALUATIONS AND RECOMMENDATIONS.—(A) IN GENERAL.—At least 5 business days prior to a hearing conducted pursuant to paragraph (1), each party shall disclose to all other parties all evaluations completed by that date and recommendations based on the offering party's evaluations that the party intends to use at the hearing.

"(B) FAILURE TO DISCLOSE.—A hearing officer may bar any party that fails to comply with subparagraph (A) from introducing the relevant evaluation or recommendation at the hearing without the consent of the other party." [Section 615(f)(2)]

★ *Prohibition of attorneys' fees and related costs:* The new law maintains prior requirements and adds that attorney fees may not be awarded for an IEP meeting unless the meeting is convened as a result of an "administrative proceeding or judicial action." Fees also may not be awarded for mediation prior to the filing of a due process complaint. Fees may be reduced in certain circumstances, including if the attorney representing the parents did not provide the school district with the appropriate information in the due process complaint [see page 26, "Notification by Parents Filing a Complaint"].

"(ii) Attorneys' fees may not be awarded relating to any meeting of the IEP Team unless such meeting is convened as a result of an administrative proceeding or judicial action, or, at the discretion of the State, for a mediation described in subsection (e) that is conducted prior to the filing of a complaint under subsection (b)(6) or (k) of this section." [Section 615 (i)(3)(D)(ii)]

"(F) REDUCTION IN AMOUNT OF ATTORNEYS' FEES.—Except as provided in subparagraph (G), whenever the court finds that—

"(i) the parent, during the course of the action or proceeding, unreasonably protracted the final resolution of the controversy;

"(ii) the amount of the attorneys' fees otherwise authorized to be awarded unreasonably exceeds the hourly rate prevailing in the community for similar services by attorneys of reasonably comparable skill, reputation, and experience;

"(iii) the time spent and legal services furnished were excessive considering the nature of the action or proceeding; or

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"(iv) the attorney representing the parent did not provide to the school district the appropriate information in the due process complaint in accordance with subsection (b)(7);

Attorneys' fees may be reduced if attorney did not provide appropriate information to school system of parents filing a complaint.

"the court shall reduce, accordingly, the amount of the attorneys' fees awarded under this section.

"(G) EXCEPTION TO REDUCTION IN AMOUNT OF ATTORNEYS' FEES.—The provisions of subparagraph (F) shall not apply in any action or proceeding if the court finds that the State or local educational agency unreasonably protracted the final resolution of the action or proceeding or there was a violation of this section." [Section 615(i)(3)(F) and (G)]

★ *Maintenance of current educational placement and placement in alternative educational setting—authority of school personnel:* Under the old IDEA, during the time that a proceeding was being conducted, the child remained in his or her current educational placement (unless otherwise agreed by the SEA or LEA and parents), except in the case of a child who brought a firearm to school. Under what is known as the "Jeffords Amendment," such a child could be placed in an interim alternative educational setting for not more than 45 days. If a parent requested a due process hearing in a case involving a firearm, the child still remained in the interim placement.

★ *Maintenance of current educational placement and placement in alternative educational setting—authority of school personnel:* IDEA 97 brings several changes to prior requirements, including expanding the school's right to take disciplinary action with children with disabilities who knowingly possess or use illegal drugs or sell or solicit the sale of a controlled substance while at school or school functions. Under certain circumstances, schools are required now to conduct a functional behavioral assessment and implement a behavior intervention plan.

"(j) MAINTENANCE OF CURRENT EDUCATIONAL PLACEMENT.—Except as provided in subsection (k)(7) [see page 33], during the pendency of any proceedings conducted pursuant to this section, unless the State or local educational agency and the parents otherwise agree, the child shall remain in the then-current educational placement of such child, or, if applying for initial admission to a public school, shall, with the consent of the parents, be placed in the public school program until all such proceedings have been completed.

"(k) PLACEMENT IN ALTERNATIVE EDUCATIONAL SETTING.—

Under the new law, "(k) Placement in Alternative Educational Setting" consists of 10 separate, but interrelated, subparagraphs: (1) Authority of school personnel; (2) Authority of hearing officer; (3) Determination of setting; (4) Manifestation determination review; (5) Determination that behavior was not manifestation of disability; (6) Parent appeal; (7) Placement during appeals; (8) Protections for children not yet eligible for special education and related services; (9) Referral to and action by law enforcement and judicial authorities; and (10) Definitions.

Subparagraphs (1)-(10) are presented in the next few pages and, although reviewed separately, should be viewed as aspects of the same issue—the procedures for placing a child in an alternative educational setting.

"(1) AUTHORITY OF SCHOOL PERSONNEL.—

"(A) School personnel under this section may order a change in the placement of a child with a disability—

"(i) to an appropriate interim alternative educational setting, another setting, or suspension, for not more than 10 school days (to the extent such alternatives would be applied to children without disabilities); and

"(ii) to an appropriate interim alternative educational setting for the same amount of time that a child without a disability would be subject to discipline, but for not more than 45 days if—

"(I) the child carries a weapon to school or to a school function under the jurisdiction of a State or local educational agency; or

"(II) the child knowingly possesses or uses illegal drugs or sells or solicits the sale of a controlled substance while at

school or a school function under the jurisdiction of a State or local educational agency.

New requirements re: functional behavioral assessments of students with disabilities involved in disciplinary action:

"(B) Either before or not later than 10 days after taking a disciplinary action described in subparagraph (A)—

"(i) if the local educational agency did not conduct a functional behavioral assessment and implement a behavioral intervention plan for such child before the behavior that resulted in the suspension described in subparagraph (A), the agency shall convene an IEP meeting to develop an assessment plan to address that behavior; or

"(ii) if the child already has a behavioral intervention plan, the IEP Team shall review the plan and modify it, as necessary, to address the behavior." [Section 615(j)-(k)(1)]

★ *Authority of hearing officer:* Under judicial interpretations of the old IDEA, a court could order the placement of a child to be changed if that placement was substantially likely to result in injury to the child or others.

★ *Authority of hearing officer:* The new IDEA has expanded the authority of hearing officers to place children in interim educational settings.

"(2) AUTHORITY OF HEARING OFFICER.—A hearing officer under this section may order a change in the placement of a child with a disability to an appropriate interim alternative educational setting for not more than 45 days if the hearing officer—

"(A) determines that the public agency has demonstrated by substantial evidence that maintaining the current placement of such child is substantially likely to result in injury to the child or to others;

See subparagraph (10), on page 36, for the definition of "substantial evidence"

"(B) considers the appropriateness of the child's current placement;

"(C) considers whether the public agency has made reasonable efforts to minimize the risk of harm in the child's current placement, including the use of supplementary aids and services; and

"(D) determines that the interim alternative educational setting meets the requirements of paragraph (3)(B)" [see below, under "Determination of Setting"]. [Section 615 (k)(2)]

★ *Determination of setting:* No explicit provisions regarding determining interim alternative educational settings existed in the old IDEA until the Jeffords Amendment to the IDEA was added, which provided for the removal of a student for up to 45 days for bringing a firearm to school.

★ *Determination of setting:* Under IDEA 97, the IEP Team determines the interim alternative educational setting of the child. Additional requirements have been added.

"(3) DETERMINATION OF SETTING.—

"(A) IN GENERAL.—The alternative educational setting described in paragraph (1)(A)(ii) shall be determined by the IEP Team.

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The interim alternative educational setting must—

✓ *enable the student to participate in the general curriculum and receive those services listed in the IEP; and*

✓ *include services designed to address the behavior.*

★ *Manifestation determination review:* No similar provisions existed in the old IDEA.

Immediate parent notification required

Determining whether or not the behavior was a manifestation of the child's disability

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"(B) ADDITIONAL REQUIREMENTS.—Any interim alternative educational setting in which a child is placed under paragraph (1) or (2) shall—

"(i) be selected so as to enable the child to continue to participate in the general curriculum, although in another setting, and to continue to receive those services and modifications, including those described in the child's current IEP, that will enable the child to meet the goals set out in that IEP; and

"(ii) include services and modifications designed to address the behavior described in paragraph (1) or paragraph (2) so that it does not recur." [Section 615(k)(3)]

★ *Manifestation determination review:* In the new law, immediately, if possible, but in no case later than 10 school days after the disciplinary action has been taken, the IEP Team and other qualified individuals shall review the relationship between the child's disability and the behavior subject to disciplinary action, to determine whether or not the behavior was a manifestation of the child's disability. The team must consider a wide range of information in making this determination.

"(4) MANIFESTATION DETERMINATION REVIEW.—

"(A) IN GENERAL.—If a disciplinary action is contemplated as described in paragraph (1) or paragraph (2) for a behavior of a child with a disability described in either of those paragraphs, or if a disciplinary action involving a change of placement for more than 10 days is contemplated for a child with a disability who has engaged in other behavior that violated any rule or code of conduct of the local educational agency that applies to all children—

"(i) not later than the date on which the decision to take that action is made, the parents shall be notified of that decision and of all procedural safeguards accorded under this section; and

"(ii) immediately, if possible, but in no case later than 10 school days after the date on which the decision to take that action is made, a review shall be conducted of the relationship between the child's disability and the behavior subject to the disciplinary action.

"(B) INDIVIDUALS TO CARRY OUT REVIEW.—A review described in subparagraph (A) shall be conducted by the IEP Team and other qualified personnel.

"(C) CONDUCT OF REVIEW.—In carrying out a review described in subparagraph (A), the IEP Team may determine that the behavior of the child was not a manifestation of such child's disability only if the IEP Team—

"(i) first considers, in terms of the behavior subject to disciplinary action, all relevant information, including (I) evaluation and diagnostic results, including such results or other relevant information supplied by the parents of the

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	child; (II) observations of the child; and (III) the child's IEP and placement; and "(ii) then determines that— "(I) in relationship to the behavior subject to disciplinary action, the child's IEP and placement were appropriate and the special education services, supplementary aids and services, and behavior intervention strategies were provided consistent with the child's IEP and placement; "(II) the child's disability did not impair the ability of the child to understand the impact and consequences of the behavior subject to disciplinary action; and "(III) the child's disability did not impair the ability of the child to control the behavior subject to disciplinary action." [Section 615(k)(4)]
★ *Determination that behavior was not a manifestation of disability:* No similar provisions existed in the old IDEA.	★ *Determination that behavior was not a manifestation of disability:* Under the new law, if it is determined that the behavior was not a manifestation of the child's disability, the relevant disciplinary procedures applicable to children without disabilities may be applied to the child in the same manner in which they would be applied to children without disabilities, provided, however, that there is no cessation of educational services. "(5) DETERMINATION THAT BEHAVIOR WAS NOT MANIFESTATION OF DISABILITY.— "(A) IN GENERAL.—If the result of the review described in paragraph (4) is a determination, consistent with paragraph (4)(C), that the behavior of the child with a disability was not a manifestation of the child's disability, the relevant disciplinary procedures applicable to children without disabilities may be applied to the child in the same manner in which they would be applied to children without disabilities, except as provided in section 612(a)(1) [the requirement that schools make FAPE available to children with disabilities who have been suspended or expelled from school]. "(B) ADDITIONAL REQUIREMENT.—If the public agency initiates disciplinary procedures applicable to all children, the agency shall ensure that the special education and disciplinary records of the child with a disability are transmitted for consideration by the person or persons making the final determination regarding the disciplinary action." [Section 615(k)(5)]
★ *Parent appeal of manifestation determination and interim alternative placement actions:* Parental appeals were subject to IDEA's due process provisions. No explicit provisions regarding manifestation determination or interim alternative educational placements existed in the old law.	★ *Parent appeal of manifestation determination and interim alternative placement actions:* Under the new IDEA, if a parent disagrees with the determination or placement decision, the parent may request a hearing. The SEA or LEA shall arrange for an expedited hearing when requested by the parent. The hearing officer will make a determination as to whether the behavior was a manifestation of the child's disability.

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"(6) PARENT APPEAL.—

"(A) IN GENERAL.—(i) If the child's parent disagrees with a determination that the child's behavior was not a manifestation of the child's disability or with any decision regarding placement, the parent may request a hearing.

"(ii) The State or local educational agency shall arrange for an expedited hearing in any case described in this subsection when requested by a parent.

"(B) REVIEW OF DECISION.—(i) In reviewing a decision with respect to the manifestation determination, the hearing officer shall determine whether the public agency has demonstrated that the child's behavior was not a manifestation of such child's disability consistent with the requirements of paragraph (4)(C) [see "(4) Manifestation Determination Review: (C), Conduct of Review," on page 31].

"(ii) In reviewing a decision under paragraph (1)(A)(ii) [for drug and weapon violations] to place the child in an interim alternative educational setting, the hearing officer shall apply the standards set out in paragraph (2)" [see page 30, "(2) Authority of hearing officer"]. [Section 615(k)(6)]

★ *Placement during appeals:* Under the prior legislation, during the pendency of any administrative or judicial proceeding regarding a complaint, the child remained in his or her current educational placement, unless the parents and public agency agreed otherwise. Under the Jeffords Amendment, the LEA could keep the student in the alternative educational setting during the pendency of the proceedings, unless the parents and the LEA agreed otherwise.

★ *Placement during appeals:* The requirements of the new law are as follow:

"(7) PLACEMENT DURING APPEALS.—

"(A) IN GENERAL.—When a parent requests a hearing regarding a disciplinary action described in paragraph (1)(A)(ii) [when school personnel changed the child's placement for up to 45 days] or paragraph (2) [when a hearing officer orders a change in placement for not more than 45 days] to challenge the interim alternative educational setting or the manifestation determination, the child shall remain in the interim alternative educational setting pending the decision of the hearing officer or until the expiration of the time period provided for in paragraph (1)(A)(ii) or paragraph (2), whichever occurs first, unless the parent and the State or local educational agency agree otherwise.

When a parent requests a hearing regarding a disciplinary action, the child remains in the interim alternative educational setting until the hearing officer decides or until the expiration of the time period allowed, whichever happens first.

"(B) CURRENT PLACEMENT.—If a child is placed in an interim alternative educational setting pursuant to paragraph (1)(A)(ii) or paragraph (2) and school personnel propose to change the child's placement after expiration of the interim alternative placement, during the pendency of any proceeding to challenge the proposed change in placement, the child shall remain in the current placement (the child's placement prior to the interim alternative educational setting), except as provided in subparagraph (C).

"(C) EXPEDITED HEARING.—(i) If school personnel maintain that it is dangerous for the child to be in the current placement (placement prior to removal to the interim alternative educational setting) during the pendency of the due process proceedings, the local educational agency may request an expedited hearing.

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"(ii) In determining whether the child may be placed in the alternative educational setting or in another appropriate placement ordered by the hearing officer, the hearing officer shall apply the standards set out in paragraph (2)" [see page 30, "(2) Authority of Hearing Officer"].

★ *Protections for children not yet eligible for special education:* No similar provisions existed in the old IDEA.

★ *Protections for children not yet eligible for special education:* Under IDEA 97, a child who has not yet been found eligible for special education and who has violated a rule or code of conduct could assert the protections of the Act if the LEA had knowledge that the child was a child with a disability before the behavior occurred.

"(8) PROTECTIONS FOR CHILDREN NOT YET ELIGIBLE FOR SPECIAL EDUCATION AND RELATED SERVICES.—

"(A) IN GENERAL.—A child who has not been determined to be eligible for special education and related services under this part and who has engaged in behavior that violated any rule or code of conduct of the local educational agency, including any behavior described in paragraph (1) [see page 29, "Authority of School Personnel"], may assert any of the protections provided for in this part if the local educational agency had knowledge that the child was a child with a disability before the behavior that precipitated the disciplinary action occurred.

"(B) BASIS OF KNOWLEDGE.—A local educational agency shall be deemed to have knowledge that a child is a child with a disability if—

Determining if the LEA had prior knowledge that the child had a disability

"(i) the parent of the child has expressed concern in writing (unless the parent is illiterate or has a disability that prevents compliance with the requirements contained in this clause) to personnel of the appropriate educational agency that the child is in need of special education and related services;

"(ii) the behavior or performance of the child demonstrates the need for such services;

"(iii) the parent of the child has requested an evaluation of the child pursuant to section 614; or

"(iv) the teacher of the child, or other personnel of the local educational agency, has expressed concern about the behavior or performance of the child to the director of special education of such agency or to other personnel of the agency." [Section 615(k)(8)(B)]

"(C) CONDITIONS THAT APPLY IF NO BASIS OF KNOWLEDGE.—

What happens if the LEA did not have prior knowledge that the child had a disability

"(i) IN GENERAL.—If a local educational agency does not have knowledge that a child is a child with a disability (in accordance with subparagraph (B)) prior to taking disciplinary measures against the child, the child may be subjected to the same disciplinary measures as measures applied to children without disabilities who engaged in comparable behaviors consistent with clause (ii).

Old IDEA

IDEA 97

What happens if the LEA did not have prior knowledge that the child had a disability (continued)

"(ii) LIMITATIONS.—If a request is made for an evaluation of a child during the time period in which the child is subjected to disciplinary measures under paragraph (1) or (2) [see page 29, "(1) Authority of School Personnel" and page 30, "(2) Authority of Hearing Officer"], the evaluation shall be conducted in an expedited manner. If the child is determined to be a child with a disability, taking into consideration information from the evaluation conducted by the agency and information provided by the parents, the agency shall provide special education and related services in accordance with the provisions of this part, except that, pending the results of the evaluation, the child shall remain in the educational placement determined by school authorities." [Section 615(k)(8)(C)]

★ *Referral to and action by law enforcement and judicial authorities:* No explicit provision existed in the old IDEA.

★ *Referral to and action by law enforcement and judicial authorities:* The new law makes clear that agencies are not prohibited from reporting a crime committed by a child with a disability to appropriate authorities. Similarly, the law does not prevent State law enforcement and judicial authorities from exercising their responsibilities. The agency reporting the crime must ensure that copies of the special education and disciplinary records are transmitted for consideration by the appropriate authorities.

"(9) REFERRAL TO AND ACTION BY LAW ENFORCEMENT AND JUDICIAL AUTHORITIES.—

"(A) Nothing in this part shall be construed to prohibit an agency from reporting a crime committed by a child with a disability to appropriate authorities or to prevent State law enforcement and judicial authorities from exercising their responsibilities with regard to the application of Federal and State law to crimes committed by a child with a disability.

"(B) An agency reporting a crime committed by a child with a disability shall ensure that copies of the special education and disciplinary records of the child are transmitted for consideration by the appropriate authorities to whom it reports the crime." [Section 615(k)(9)(A) and (B)]

★ *Definitions:* Although most of the definitions provided in this subparagraph of IDEA 97 are drawn from other Federal laws, no similar definitions existed explicitly in the old IDEA. The Jeffords Amendment defined "weapon" as a "firearm" as that term was defined within Federal law.

★ *Definitions:* The last subparagraph in Section 615(k) providers the definitions of terms used throughout this section.

"(10) DEFINITIONS.—For purposes of this subsection, the following definitions apply:

"(A) CONTROLLED SUBSTANCE.—The term 'controlled substance' means a drug or other substance identified under schedules I, II, III, IV, or V in section 202(c) of the Controlled Substances Act (21 U.S.C. 812(c)).

Important definitions:

- *controlled substance*
- *illegal drug*

"(B) ILLEGAL DRUG.—The term 'illegal drug'—(i) means a controlled substance; but (ii) does not include such a substance that is legally possessed or used under the supervision of a licensed health-care professional or that is legally possessed or used under any other authority under that Act or under any other provision of Federal law.

Old IDEA

IDEA 97

Important definitions (continued):

- *substantial evidence*
- *weapon*

"(C) SUBSTANTIAL EVIDENCE.—The term 'substantial evidence' means beyond a preponderance of the evidence.

"(D) WEAPON.—The term 'weapon' has the meaning given the term 'dangerous weapon' [see Editor's note below] under paragraph (2) of the first subsection (G) of section 930 of title 18, United States Code." [Section 615(k)(10)]

[Editor's note: According to the ***Report [to accompany S. 717]***, the term 'dangerous weapon' is defined as "a weapon, device, instrument, material, or substance, animate or inanimate, that is used for, or is readily capable of, causing death or serious bodily injury, except that such term does not include a pocket knife with a blade of less than 2-1/2 includes in length." (Committee on Labor and Human Resources, 1997, p. 34)]

★ ***Transfer of parental rights at age of majority:*** No similar provisions existed in the old IDEA.

★ ***Transfer of parental rights at age of majority:*** The new law outlines procedures for the transfer of parental rights to the child when he or she reaches the age of majority, consistent with State policy.

Age of majority requirements

"(1) IN GENERAL.—A State that receives amounts from a grant under this part may provide that, when a child with a disability reaches the age of majority under State law (except for a child with a disability who has been determined to be incompetent under State law)—

"(A) the public agency shall provide any notice required by this section to both the individual and the parents;

"(B) all other rights accorded to the parents under this part transfer to the child;

"(C) the agency shall notify the individual and the parents of the transfer of rights; and

"(D) all rights accorded to parents under this part transfer to "children who are incarcerated in an adult or juvenile Federal, State, or local correctional institution.

"(2) SPECIAL RULE.—If, under State law, a child with a disability who has reached the age of majority under State law, who has not been determined to be incompetent, but who is determined not to have the ability to provide informed consent with respect to the educational program of the child, the State shall establish procedures for appointing the parent of the child, or if the parent is not available, another appropriate individual, to represent the educational interests of the child throughout the period of eligibility of the child under this part." [Section 615(m)]

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Part C: Infants and Toddlers with Disabilities

★ *Change within IDEA:* In the old legislation, the Infants and Toddlers Program requirements were located in Part H, so that early intervention was often referred to as the Part H program.

★ *Change within IDEA:* Under the new law, the Infants and Toddlers Program requirements are located in Part C. There will no longer be a Part H. These changes take effect July 1, 1998.

★ *Findings and Policies:* The old IDEA included findings related to the need to enhance the development of infants and toddlers with disabilities.

★ *Findings and Policies:* IDEA 97 maintains prior findings and modifies one of its purposes from developing an early intervention "program" to developing a "system that provides early intervention services." Also added is the purpose "to encourage States to expand opportunities for children under 3 years of age who would be at risk of having substantial developmental delay if they did not receive early intervention services." [Section 631(b)(1) and (4)]

★ *Definitions:* A definition of *"at-risk infant or toddler"* did not exist in old law.

★ *Definitions:* The new law maintains previous definitions and additionally defines *"at-risk infant or toddler"* as: "...an individual under 3 years of age who would be at risk of experiencing a substantial developmental delay if early intervention services were not provided to the individual." [Section 632(1)]

★ *General requirements:* The old law outlined a series of requirements, including a timetable for implementation of an early intervention system.

★ *General requirements:* The new law maintains previous requirements and clarifies that the identification of each family's needs must be "family-directed." [Section 635(a)(3)] The implementation timetable has been dropped. A requirement is added that a State policy must be in effect that ensures availability of early intervention services. [Section 635(a)(2)]

★ *Natural environments:* No similar provisions existed in the old IDEA.

★ *Natural environments:* The new law requires policies and procedures that ensure:

"(A) to the maximum extent appropriate, early intervention services are provided in natural environments; and

"(B) the provision of early intervention services for any infant or toddler occurs in a setting other than a natural environment only when early intervention cannot be achieved satisfactorily for the infant or toddler in a natural environment." [Section 635(a)(16)]

★ *Personnel standards:* See description of "Personnel Standards" under Part B (page 14). Similar requirements existed for the Infant and Toddler Program.

★ *Personnel standards:* See description of "Personnel Standards" under Part B (page 14). Similar requirements exist under the new law for the Infant and Toddler Program. [Section 635(a)(8)]

★ *IFSP:* The prior legislation outlined requirements for the development of individualized family service plans (IFSP).

★ *IFSP:* The new law maintains similar requirements, with the additional requirement that a justification be included "of the extent, if any, to which services will not be provided in a natural environment." [Section 636(d)(5)]

★ *Procedural safeguards:* The old law outlined procedural safeguards to be included in the statewide system.

★ *Procedural safeguards:* The new law maintains prior requirements. The prohibition on who may not serve as a surrogate parent is expanded to include individuals or employees of providers of early intervention services. [Section 639(a)(5)] Right to mediation, as delineated under Part B, applies to

Part C as well, with Part B references to FAPE being considered as references to early intervention services. [Section 639(a)(8)]

★ *State Interagency Coordinating Council:* The old law required a State to establish an ICC according to listed specifications and limited the number of members.

★ *State Interagency Coordinating Council:* The new IDEA maintains prior requirements regarding establishment, composition, meetings, management authority, and function of ICCs. The number of members is now left to the State to determine. [Section 641]

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